

Message Text

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ACTION L-03

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UNCLAS BOMBAY 2142

STATE FOR L
JUSTICE FOR BRUNO A. RISTAU, CHIEF FOREIGN LITIGATION
NEW DELHI FOR B. M. RAO, USAID ATTORNEY ADVISOR

E.O. 11652: N/A
TAGS: ABLD, ACLM, IN
SUBJECT: AGA KAHN PROPERTY

REF: A. STATE 133142 B. BOMBAY 1335

1. AFTER NUMEROUS POSTPONEMENTS IT NOW APPEARS THAT THE CHARITY COMMISSIONER'S HEARING ON THE APPLICATION TO WITHDRAW HIS SANCTION FOR THE SALE OF THE AGA KHAN PROPERTY TO THE USG WILL BEGIN ON SEPTEMBER 2. THE WRITTEN AFFIDAVITS AND RESPONSES HAVE BEEN SUBMITTED. CONGEN LAWYER EXPECTS ORAL PRESENTATIONS TO BEGIN ON SEPTEMBER 2.

2. IN ITS MOST RECENT AFFIDAVIT THE GOVERNMENT OF MAHARASHTRA HAS TAKEN A MUCH FIRMER STAND AGAINST AUTHORIZATION OF SALE OF THE PROPERTY TO A PRIVATE BUILDER. THE AFFIDAVIT STATES: QUOTE THE STATE GOVERNMENT WOULD NOT HAVE GIVEN EXEMPTION TO THE TRUST TO ENABLE IT TO SELL THE PROPERTY TO ANY PRIVATE PARTY UNLESS THE STATE GOVERNMENT WAS SATISFIED THAT THE USE TO WHICH SUCH LAND WOULD BE PUT TO BY THE INTENDING PURCHASER WOULD BE WITHIN THE SCOPE OF PUBLIC INTEREST ENVISIONED BY SECTION 20 OF THE URBAN LAND
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CEILING ACT. COMMERCIAL EXPLOITATION OF SUCH LAND IS NOT WITHIN THE PURVIEW OF SECTION 20 OF THE ACT. UNQUOTE. THE AFFIDAVIT GOES ON TO SAY THAT EVEN IF THE SALE OF THE LAND TO A PRIVATE PARTY MIGHT COME WITHIN THE PURVIEW OF PUBLIC INTEREST THE STATE GOVERNMENT WOULD PREFER THE QUOTE MUCH WIDER PUBLIC INTEREST UNQUOTE SERVED BY ALLOWING THE SALE FOR THE PURPOSE OF A FOREIGN DIPLOMATIC MISSION. THE GOVERNMENT OF MAHARASHTRA ALSO MAKES

REFERENCE TO ITS RESPONSIBILITIES UNDER THE VIENNA CONVENTION TO ASSIST IN FINDING SUITABLE ACCOMMODATIONS FOR MEMBERS OF CONSULAR POSTS.

3. POST BELIEVES THERE IS GOOD CHANCE THAT THE CHARITY COMMISSIONER WILL DECIDE IN OUR FAVOR, AUTHORIZING OUR PURCHASE OF THE PROPERTY. HOWEVER, IT ALSO APPEARS TO BE ALMOST A CERTAINTY THAT THE APPLICANT CONSTRUCTION COMPANY, WHICH IS TRYING TO BLOCK THE SALE, WILL PETITION THE BOMBAY HIGH COURT TO HEAR THE CASE AND OVERTURN A RULING OF THE CHARITY COMMISSIONER FAVORABLE TO US. IF ON THE OTHER HAND, THE CHARITY COMMISSIONER DECIDES AGAINST US TO WITHDRAW HIS PREVIOUS AUTHORIZATION WE EXPECT THE TRUST TO PETITION THE HIGH COURT. IN BOTH INSTANCES WE WOULD NEED TO BE A PARTY TO THE LITIGATION IN ORDER TO PROTECT OUR INTEREST. UNFORTUNATELY IT APPEARS THAT NO MATTER HOW THE CHARTY COMMISSIONER DECIDES WE MAY WELL BE IN FOR A LONG PERIOD OF FURTHER LITIGATION.

4. FROM THE OUTSET OF THE LEGAL CHALLENGE TO THE PURCHASE WE HAVE BEEN HOPEFUL THAT DURING THE BRIEF PERIOD OF TIME BETWEEN THE CHARITY COMMISSIONER'S ANTICIPATED FAVORABLE DECISION AND TH ANTICIPATED PETITION TO THE HIGH COURT BY THE CONSTRUCTION COMPANY WE WOULD BE ABLE TO CONSUMATE THE DEAL WITH THE TRUST. IF WE WERE IN ACTUAL POSSESSION OF THE PROPERTY IT WOULD PUT US IN A MUCH STRONGER POSITION. WE HAVE ALL OF THE PREPARATIONS WHICH ARE NECESSARY FROM OUR SIDE AND WE HAVE THE CHECK FOR THE FULL PURCHASE PRICE WHICH WE ARE READY TO HAND OVER

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AS SOON AS POSSIBLE. HOWEVER THE LACK OF ACTIVITY ON THE PART OF THE TRUST IN PREPARING FOR THE FINAL CTNSQMATION AND THE RECENT CALLS WHICH REPRESENTATIVES OF THE TRUST HAVE MADE ON DCM BLOOD AND CONSUL GENERAL COURTNEY HAVE MADE CLEAR THAT THERE WILL BE DIFFICULTY IN INDUCING THEM TO ACCEPT OUR CHECK.

5. IN VIEW OF THE POSSIBILITY OF A PROMPT DECISION AT THE CHARITY COMMISSIONER LEVEL IT IS VITAL THAT THE CONGEN BE IN THE POSITION TO TAKE IMMEDIATE ACTION TO DEFEND OUR INTEREST, IF AND WHEN THE CASE IS TAKEN TO BOMBAY HIGH COURT. TO DO THIS WE MUST HAVE JUSTICE DEPARTMENT APPROVAL FOR OUR COUNSEL TO APPEAR. LAWYER PARTAP'S QUALIFICATIONS AND THE PLANNED COURSE OF LITIGATION WERE OUTLINED IN REF B.

6. AT THIS STATE IT IS VERY DIFFICULT TO ESTIMATE ACCURATELY THE AMOUNT OF WORK THAT WOULD HAVE TO BE PUT INTO THE WRI PETITION PROCEEDING ON OUR BEHALF. A WRIT PETITION HAS TWO STAGES; THE ADMISSION STAGE AND THE FINAL HEARING STAGE. IF THE PETITION IS ADMITTED THERE WOULD, IN THE NORMAL COURSE, BE A GAP OF ANYTHING BETWEEN SIX MONTHS AND FIVE YEARS BETWEEN THE TWO. OUR LAWYER ESTIMATES THAT THE LEGAL FEES FOR HIGH COURT LITIGATION THROUGH THE ADMISSION STAGE WILL BE IN THE REGION OF RS.15,000. THIS IS BASED

ON THE ASSUMPTION THAT OUR INVOLVEMENT IN THE HIGH COURT WOULD
BE OF THE SAME NATURE AS IN THE PRESENT PROCEEDINGS AND THAT THE
ADMISSION STAGE WILL NOT REQUIRE MORE THAN ONE OR TWO APPEARANCES
IN THE HIGH COURT.

7. CONGEN REQUESTS THAT JUSTICE DEPARTMENT IMMEDIATELY CONSIDER
THIS PLAN AND AUTHORIZE US TO INSTRUCT OUR LAWYER TO TAKE NECESSARY
ACTION SUBSEQUENT TO THE SEPTEMBER 2 HEARING.
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